

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 * * *

9 PAUL REED and ELENA GOLOVINA-
10 REED, individually and as husband and wife,

11 Plaintiffs,

12 v.

13 ARTHREX, INC., a foreign corporations; and
14 JOHN DOES I - XX, inclusive,

Defendants.

3:17-cv-00337-LRH-WGC

ORDER

15 Plaintiffs Paul Reed and Elena Golovina-Reed initiated this action in the Second Judicial
16 District Court for Washoe County, Nevada on May 5, 2017. On May 30, 2017, on the basis of
17 diversity jurisdiction, Defendant Arthrex, Inc. filed a notice of removal to this court (ECF NO. 1¹).

18 After review of the complaint and Defendant's petition for removal, the court finds that it
19 requires more evidence to determine whether it has subject matter jurisdiction over this case.
20 While it appears that the parties are of diverse citizenship,² Defendant has not demonstrated that the
21 amount in controversy exceeds \$75,000.

22 "[A]ny civil action brought in a State court of which the district courts of the United States
23 have original jurisdiction, may be removed by the defendant . . . to the district court of the United
24

25 ¹ Refers to the court's docket entry number.

26 ²Plaintiffs are residents of Nevada and Defendant is incorporated under the laws of Delaware and has
its principal place of business in Naples, Collier County, Florida.

1 States for any district . . . where such action is pending.” 28 U.S.C. § 1441(a). Among other
2 reasons, the district courts of the United States have “original jurisdiction” where there is diversity
3 of citizenship between the parties and the amount in controversy, exclusive of interest and costs,
4 exceeds \$75,000. 28 U.S.C. § 1332(a).

5 “If . . . it appears that the district court lacks subject matter jurisdiction, the case shall be
6 remanded.” 28 U.S.C. § 1447(c). “Federal jurisdiction must be rejected if there is any doubt as to
7 the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)
8 (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). Moreover, the
9 removal statute is construed restrictively and in favor of remanding a case to state court. *See*
10 *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus*, 980 F.2d at 566.

11 After a defendant files a petition for removal, the court must determine whether federal
12 jurisdiction exists, even if no objection is made to removal. *See Rains v. Criterion Systems, Inc.*,
13 80 F.3d 339, 342 (9th Cir. 1996). The defendant always has the burden of establishing that
14 removal is proper. *Gaus*, 980 F.2d at 566. Normally this burden is satisfied if the plaintiff claims a
15 sum greater than the jurisdictional requirement. *Id.*

16 However, if the plaintiff does not claim a sum greater than the jurisdictional requirement,
17 the defendant cannot meet its burden by merely alleging that the amount in controversy is met:
18 “The authority which the statute vests in the court to enforce the limitations of its jurisdiction
19 precludes the idea that jurisdiction may be maintained by mere averment” *Id.* (quoting
20 *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)) (emphasis omitted).

21 In some cases, it may be “‘facially apparent’ from the complaint that the jurisdictional
22 amount is in controversy.” *See Singer v. State Farm Mut. Auto. Ins.*, 116 F.3d 373, 377 (9th Cir.
23 1997) (delineating the “appropriate procedure for determining the amount in controversy on
24 removal” as described in *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326 (5th Cir. 1995)). However,
25 “[w]hen the amount is not facially apparent from the complaint, the court may consider facts in the
26 removal petition and may require parties to submit summary-judgment-type evidence relevant to

1 the amount in controversy at the time of removal.” *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980
2 (9th Cir. 2006) (internal quotation marks omitted).

3 Here, in arguing that the amount in controversy requirement has been satisfied, Defendant
4 relies solely on the allegations in the complaint. However, the court finds that it is not facially
5 apparent from the complaint that more than \$75,000 is in controversy. It may be that medical
6 expenses alone, and other special damages claimed by plaintiffs exceed the threshold amount for
7 jurisdiction in this court, however there has been no showing of such an amount by removing
8 defendant(s). Accordingly, jurisdiction has not been established.

9 The court will provide Defendant additional time to present “summary-judgment-type
10 evidence” showing by a preponderance of the evidence that this case meets § 1332(a)’s amount in
11 controversy requirement.

12 IT IS THEREFORE ORDERED that Defendant is granted twenty (20) days to establish the
13 minimum amount in controversy for federal jurisdiction. Plaintiff is granted ten (10) days to file an
14 opposition. No reply is required.

15 IT IS SO ORDERED.

16 DATED this 1st day of June, 2017.

17
18 
19 LARRY R. HICKS
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26